REMARKS

In response to the final Office Action of September 9, 2005, Applicant respectfully requests that the following amendments be entered pursuant to the provisions of 37 C.F.R. § 116. This amendment should be entered because the amendment clarifies the differences over the prior art without raising new issues or subject matter.

Claims 1-6 and 8-24 remain in the application. Claim 7 has been cancelled.

Objection to the Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. The specification has been amended to include the word "hole" as recited in the claims and shown in figures 2-9. Support for this amendment can be found in figures 2-9. No new matter has been added. Applicant respectfully requests that this objection be withdrawn.

Objection to the Claims

Claim 7 is objected to under 37 C.F.R. § 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Claim 7 has been cancelled. Applicant respectfully requests that this objection be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

Claims 1-24 were rejected under 35 U.S.C. § 103(a) as obvious over DE-767872 (DE'872). Applicant has translated this reference into English and can provide the English translation upon the Examiner's request. Applicant respectfully traverses.

Applicant's claims recite a multi-axis shock and vibration isolator. The office action asserts that DE'872 Figure 1 shows a multi-axis shock and vibration isolator (office action, page 3, lines 3-9). The device shown in Figure 1 is not a vibration isolator but a spring designed to impart a single axis restorative force (DE'872, page 1, paragraph 2).

Furthermore, claim 1 recites a body made of an elastomeric material for attenuating vibration at a first frequency along a vertical axis. The office action acknowledges that DE'872 does not disclose an elastomeric body and asserts that the remainder of the recitation is disclosed (office action, page 3, lines 3-5). Applicant cannot find any such disclosure. In fact, DE'872 actually teaches away from the device being an attenuator. That is, DE'872's structure is specifically a honeycomb to allow the walls of the structure to reinforce each other during compression (DE'872, page 2, paragraph 2). This maximizes restorative force but minimizes attenuation. In addition, DE'872 discloses a metal device assembled through sintering, welding, soldering, riveting or the like (DE'872, page 2, paragraph 2). A metal structure is far from ideal for attenuating shock and vibration.

Claim 1 also recites first and second holes being sized and shaped for attenuating vibration at a second frequency along a lateral axis. The office action asserts this recitation is disclosed in DE'872 (office action, page 3, lines 9-10). The applicant can find no such disclosure. The recommended assembly of the metal device using sintering, welding, soldering, riveting or the like, teaches away from the use of the holes as attenuators (DE'872, page 2, paragraph 2). To provide attenuation, the size and shape of the holes should be tuned to dampen frequencies of interest. Using the imprecise machining methods disclose in DE'872, it is quite probable that the resulting device would have the opposite effect when a shock is applied, ringing vibrations rich in harmonics.

The office action acknowledges that DE'872 fails to disclose the material of the body is elastomeric or that the first and second holes are sized and shaped for attenuating vibration at a second frequency (office action, page 3, line 12-14). Relying on *In re Leshin*, the office action asserts that it would have been obvious to modify DE'872 and use elastomeric material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for use as a matter of obvious design choice (office action, page 3, lines 15-18) (227 F.2d 197, 125 USPQ 416 (CCPAA 1960)). The holding of *In re Leshin* as interpreted in the MPEP is far narrower than asserted:

> Selection of a known plastic to make a container of a type made of plastic prior to the invention was held to be obvious (MPEP § 2144.07).

In *In re Leshin*, the applicant merely substituted one well known plastic for another well known plastic in manufacturing a lipstick case. This simple substitution is a far cry from asserting that replacing a metallic structure constructed using sintering, welding, soldering and riveting with an elastomeric material is a matter of obvious design choice. In addition, the use of an elastic material is an important limitation since it affects the frequency response of the isolator and its ability to attenuate vibrations (application, paragraph 22). This can also be seen by the deformation characteristic of the isolator (application, figure 8). Accordingly, it is not even proper to rely on legal precedent to support an obviousness rejection (MPEP 2144.04).

Relying on legal precedent once again, the office action asserts that it would have been obvious to modify the size and shape of the first and second holes to have been such that they attenuate vibration along a lateral axis. The office action asserts that *In re Dailey* held that the configuration of a claimed object was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration was significant (office action, page 4, lines 6-10 (357 F.2d 669, 149 USPQ 47 (CCPA 1966)). However, the holding as interpreted by the MPEP is far narrower:

> In re Dailey (357 F.2d 669, 149 USPQ 47 (CCPA 1966) (The court held that the configuration of the claimed disposable plastic nursing container was a matter of choice). (MPEP 2144.04 B)

The *In re Dailey* holding refers to the configuration of a baby bottle that had the same functionality as baby bottles in the prior art. The function and operation of the bottles were virtually identical with shape being the only distinguishing characteristic. It is quite a leap to insist that the holes of applicant's invention shaped and formed specifically to reduce shock and vibration, are the slight configuration change of *In re Dailey*. The shape, size and positioning of Applicant's holes affect the frequency response of the isolator (application, paragraph 26). Accordingly, it is not only a non-obvious configuration change, but it is not proper to rely on legal precedent to support an obviousness rejection (MPEP 2144.04).

For the reasons stated above Applicant respectfully submits that claim 1 is patentable.

Claims 2-6 and 8-9 depend from claim 1 adding structural features that more particularly define the invention and further distinguish over the cited references and the prior art of record. For these reasons, and for the reasons set forth above for claim 1, claims 2-6 and 8-9 are patentable.

Claim 10 contains the two claim recitations relied on for the patentability rationale for claim 1. Therefore, claim 10 is patentable for the same reasons.

Claims 11-14 depend from claim 10 adding structural features that more particularly define the invention and further distinguish over the cited references and the prior art of record. For these reasons, and for the reasons set forth above for claim 10, claims 11-14 are patentable.

Claim 15 recites a plus signed shaped through hole connecting the first, second, third and fourth holes. Applicant fails to see how DE'872 discloses, teaches or suggests such a structure and submits the claim is patentable.

Claims 16-20 depend from claim 15 adding structural features that more particularly define the invention and further distinguish over the cited references and the prior art of record. For these reasons, and for the reasons set forth above for claim 15, claims 16-20 are patentable.

Claim 21 is for a tunable shock and vibration isolator that attenuates in the longitudinal and lateral axes. DE'872 fails to disclose, teach or suggest any attenuation features as explained above. Applicant submits the claim is patentable for this reason.

Claims 22-24 depend from claim 21 adding structural features that more particularly define the invention and further distinguish over the cited references and the prior art of record. For these reasons, and for the reasons set forth above for claim 21, claims 22-24 are patentable.

For the reasons stated, above Applicant believes that claims 1-6 and 8-24 are patentable and respectfully requests that the rejections be withdrawn.

Conclusion

In view of the above amendments and remarks, it is respectfully submitted that all the pending claims are in condition for allowance, and such action is earnestly solicited. If the Examiner believes that a telephone interview will help further the prosecution of this case, he is respectfully requested to contact the undersigned attorney at the listed telephone number.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 9, 2005.

By: Sharon Farnus

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Signature

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Very truly yours,

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